SUPREME COURT OF THE UNITED STATES.

No. 166.—October Term, 1920.

Alaska Fish Salting and By-Products Company, Plaintiff in Error, vs. Walstein G. Smith. } *In Error to the District Court, Division No. 1, of the Territory of Alaska.*

[*January 31, 1921.*]

Mr. *Justice* Holmes *delivered the opinion of the Court.*

This is an action to recover the amount of taxes levied under statutes of Alaska which the plaintiff alleges to be contrary to the Act of Congress of August 24, 1912, c. 387, § 3, 37 Stat 512, creating a legislative assembly in the Territory of Alaska, and to the Constitution of the United States. Judgment was given for the defendant upon demurrer to the complaint, the parties agreeing that the foregoing grounds of recovery were the only matters in dispute. The statutes attacked, viz: May 1, 1913, April 29, 1915, and May 3, 1917, levy license taxes of two dollars a barrel and two dollars a ton respectively, upon persons manufacturing fish oil, fertilizer and fish meal in whole or in part from herring. The Act of Congress after giving effect to the Constitution and laws of the United States in the Territory provides that the authority therein granted to the legislature "to alter, amend, modify, and repeal laws in force in Alaska shall not extend to the . . . fish . . . laws . . . of the United States applicable to Alaska, or to the laws of the United States providing for taxes on business and trade . . . *Provided further*, that this provision shall not operate to prevent the legislature from imposing other and additional taxes or licenses." Some reliance is placed also upon § 9 that all taxes shall be uniform upon the same class of subjects, &c., and that no tax shall be levied for territorial purposes in excess of one per centum upon the assessed valuation of property therein in any one year.

The complainant alleges that the tax will prohibit and confiscate the plaintiff's business, which is that of manufacturing fish

oil, fertilizer, fish meal and by-products from herring either in whole or in part; that the tax unreasonably discriminates against the plaintiff, as it levies no tax upon the producers of fish oil, &c., from other fish, and is otherwise extortionate; and that it contravenes the Act of Congress in lack of uniformity and in exceeding one per centum of the actual value of the plaintiff's property. The prophecies of destruction and the allegations of discrimination as compared with similar manufactures from salmon are denied by the Attorney General for Alaska, the latter denial being based upon a comparison of the statutes which of course is open. We are content however to assume for the purposes of decision that, not to speak of other licenses, the questioned Acts do bear more heavily upon the use of herring for oil and fertilizer than they do upon the use of other fish. But there is nothing in the Constitution to hinder that. If Alaska deems it for its welfare to discourage the destruction of herring for manure and to preserve them for food for man or for salmon, and to that end imposes a greater tax upon that part of the plaintiff's industry than upon similar uses of other fish or of the offal of salmon, it hardly can be said to be contravening a Constitution that has known protective tariffs for a hundred years. *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342, 357. Even if the tax should destroy a business it would not be made invalid or require compensation upon that ground alone. Those who enter upon a business take that risk. *McCray* v. *United States*, 195 U. S. 27. *See Quong Wing* v. *Kirkendall*, 223 U. S. 59. *Mugler* v. *Kansas*, 123 U. S. 623; *Louisville & Nashville R. R. Co.* v. *Mottley*, 219 U. S. 467, 482. We need not consider whether abuses of the power might go to such a point as to transcend it, for we have not such a case before us. The Acts must be judged by their contents not by the allegations as to their purpose in the complaint. We know of no objection to exacting a discouraging rate as the alternative to giving up a business, when the legislature has the full power of taxation. The case is different from those where the power to tax is limited to inspection fees and the like, as in *Postal Telegraph & Cable Co.* v. *Taylor*, 192 U. S. 64, 72.

But it is said that however it may be with regard to the Constitution taken by itself, the statutes brought into question are contrary to the Act of Congress from which the local legislature derives its power. In the first place they are said to be an attempt

to modify or repeal the fish laws of the United States. The Act of Congress of June 6, 1900, c. 786, § 29; 31 Stat. 321, 331; Alaska Compiled Laws, § 2569; imposes a tax on fish oil works of ten cents per barrel and on fertilizer works of twenty cents per ton, repeated in slightly different words by the Act of June 26, 1906, c. 3547; 34 Stat. 478; Alaska Compiled Laws, § 259. But these are not fish laws as we understand the phrase. It is argued, however, that at least they import a license, *License Tax Cases*, 5 Wall. 462, 470, and that a tax alleged to be prohibitory flies in their teeth. It would be going far to say that a tax on fish oil works in general terms imported a license to a specific kind of works deemed undesirable by the local powers, and when we take into account the express and unlimited authority to impose additional taxes and licenses we are satisfied that the objection should not prevail. We confine our decision to the statutes before us, repeating in this connection that they must be judged by their contents not by the characterization of them in the complaint.

The requirement of uniformity in § 9 is disposed of by what we have said of the classification when considered with reference to the Constitution. The legislature was warranted in treating the making of oil and fertilizer from herring as a different class of subjects from the making of the same from salmon offal. The provisions against taxing in excess of one per centum of the assessed valuation of property does not apply to a license tax like this. This is not a property tax. *Alaska Pacific Fisheries* v. *Territory of Alaska*, 236 Fed. Rep. 52, 61. The objection that the plaintiff in error is doubly taxed, first by the United States and then by the Territory, is answered by the express authority to levy additional taxes to which we have referred heretofore. Without going into more detail we are of opinion that the tax must be sustained.

Judgment affirmed.

A true copy.

Test:

Clerk Supreme Court, U. S.